84-1628

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NO. 84-1731

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

L.A. WILLIAMS,
APPELLANT

-versus-

GENERAL MOTORS CORPORATION,
APPELLEE

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES APPEALS COURT FOR THE FIFTH CIRCUIT

L.A. WILLIAMS
Pro Se

33 pp

QUESTIONS PRESENTED FOR REVIEW

I.

Whether the Petitioner was denied relevant facts as defined in Rule 34 which would be vital for a Summary Respond.

II.

Whether a Federal Judge ever reviewed the Summary Judgement and signed Document as required by Law.

III.

Whether request for extended time before Summary Judgement was issued was ever considered or received by Judge Belew, Jr.

IV.

Whether Deposition was properly processed as required by Rule 56.

V.

Whether Lower Court used Deposition improperly as required by Rule 12c.

VI.

Whether District Court gave Petitioner sufficient time to respond to Summary Judgement.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT THREE (3) TRUE AND CORRECT COPIES OF THE PETITION OF APPELLANT WAS SERVED ON THE APPELLEE IRA BUTLER, ATTORNEY FOR GENERAL MOTORS CORPORATION ON THIS 23 DAY OF MARCH 1985.

L. A. Williams

L.A. WILLIAMS
APPELLANT PRO SE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

L.A. WILLIAMS, *

PETITIONER *

-versus- * CASE NO.84-1831

GENERAL MOTORS CORPORATION, *

RESPONDENT *

*

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEAL

FOR THE FIFTH CIRCUIT

The Petitioner, L.A. Williams, respectfully prays that a Writ of CERTIORARI issue to review the Judgement of the United States Court of Appeals for the Fifth Circuit. Entered on December 4, 1984 and Denied Petition for rehearing January 9, 1985. A copy is attached as Appendix "B".

JURISDICTION

Petitioner seeks a review of a Judgement of the United States Court of Appeals for the Fifth Circuit. Since substantial federal questions arise under the federal procedure rules.

REASONS FOR ALLOWING THE WRIT

I.

The United States Court of Appeals Fifth Circuit has overlooked the fact as in Case of STepanichen v. Merchants Despatch Trans. Corp. (1st Cir 1983) 722 F2D922 Petitioner did not agree with issue of opposing party and should be given benefit of any doubt.

The Court further stated "Williams never sought an extension". The Petitioner did request an extension on July 3, 1984.

The Petitioner was not given sufficient time to respond to Summary Judgement as in Case of Beck v. Borden Inc. (6th Cir. 1984) 724 F2D45. All parties should be given reasonable time to respond.

II.

The signature of Judge David O. Belew, Jr. was forged to legal documents requiring the signature of a Federal Judge as required by Law.

III.

The Petitioner has Affidavit that confirms General Motors Management was still telling employees Petitioner stole a motorcycle from parking lot as late as 1984. The one year limitation under Texas law is still valid.

SUMMARY

The Petitioner can present a valid case against General Motors. The truth will surely prevail. The Court should grant the Writ of CERTIORARI to the United States Court of Appeals for Fifth Circuit to review the decision rendered by that Court on December 4, 1984, and should reverse the decision which is erroneous as a matter of law.

RESPECTFULLY SUBMITTED,

L A Williams

L.A. Williams,
Pro Se

The Summary Judgement was filed August 8, 1984 in the U.S. DISTRICT COURT FORT WORTH DIVISION. The Appellant appealed to U.S. COURT OF APPEALS for THE FIFTH CIRCUIT NEW ORLEANS, LA. On December 4, 1984 Appeal was denied thus Appellant filed petition for rehearing. On January 9, 1985 THE FIFTH CIRCUIT COURT denied a rehearing.

On December 3, 1981 the Appellant was discharged by General Motors where he had worked for approximately 28 years. Appellant was falsely accused of stealing an abandoned motorcycle as described under Texas Law Art. V 5.01(2). In the Appellant's deposition P.P. 274, Line 24 the Appelle stated "They knew I did not intend to keep the motorcycle".

General Motors management authorized salaried personnel to tell their employees Appellant was fired for stealing a motorcycle. The "authorized" information was still being discussed in early 1984.

The Appellee has denied Appellant relevant facts. (letters in court files) Rule 34 Denial of Discovery McClelland v. Andrvs (DC Cir. 1979) 606 F2D 1278

The Appellee filed and the Court considered Appellant Deposition in Violation of L.R. 6.1(A) "Deposition shall not be filed with Clerk. Shall be retained by the Party to whom it is delivered to be available for appropriate use by any party in a hearing or trial of the case. The case had not had a hearing or trial.

On March 21, 1984 Appellant's Deposition was closed. The Appellant was to return April 13, 1984 with information. Appellee had requested and the Court Reporter would have Deposition for review and signature at 1:30 P.M. Upon arrival the Appellee started interrogation as part of Deposition. This procedure is in violation of Rule 56 Pikle Rite Co. v. Bonduel Picking Co. (E.D. Wis 1968) 282 F Sup. 551 (in part) "Where it appeared that Defendant did not receive notice that Plaintiff intended to take a particuliar Deposition it was excluded from consideration on Motion for Summary Judgement. (also note Clerk's Docket Sheet No Notice filed April 13, 1984) Also Deposition not taken by rules may not be considered. Blum v. Campbell (D. Md 1972) 335 F Sup. 1220.

On July 3, 1984 Appellant filed a request for more time. Request not on Clerk's Docket.

Appellant has copy stamped by Clerk July 3, 1984.

On July 18, 1984 Court (U.S. DISTRICT Fort Worth Division) issued a Show Cause Order. Appellant received on July 24, 1984 which left Appellant four (4) days with the fourth (4) day being a Saturday. Rule 56C Beck v. Borden Inc. (6th/Ci 1984) 724 F2D 45. (in part) The District Court erred in granting Summary Judgement without giving No Moving Party sufficient time to respond. Rule 12(C) states in part "All Parties should be given reasonable time to respond". On July 30, 1984 Summary Judgement was granted twelve (12) days after "Show Cause Order" which included two (2) Saturdays and two (2) Sundays. The legal documents of both Summary Judgements and findings of facts and conclusions of Law are a forgery. The Appellant must conclude that the U.S.

District Judge in question did not receive all the facts of this case. We must also conclude someone in our legal system is allowing a special interest group to sham our court procedure.

The Appellant must respond to the U.S. Court of Appeals Fifth Circuit Opinion dated December 4, 1984 "Appellant did not produce any opposing factual showing". Rule 56A (in part) The reliance on the Deposition for Summary Judgement did not mean that Appellant had accepted all the argument being based on the Deposition although Plaintiff did not submit a detailed Affidavit in opposition. He did outline his version of the disputed event and the Court could examine the Deposition easily enough. Stepanichen v. Merchants Despatch Trans. Corp. (1st Cir 1983) 722 F2D 922

The opinion noted application of F.R. Civ P 56(E) Appellant finds in case of Yusuf Asad Madyan v. Thompson 657 F2D 868 (7th Cir 1981) (in part) The Court of Appeals held the District Court erred in granting Summary Motion without first alerting Plaintiff to the need for Counter-Affidavits. Adequate knowledge of the right to and the necessity of filing Counter-Affidavits under Rule 56(E) is critical to the Pro Se Litigant's access to a just disposition on the merits.

Rule 12C when construing a motion for Judgement on the proceedings, Court is required to assume that Allegation of Facts presented by opposing party are true and must further view facts presented in pleading and inferences to be drawn there from in light most favorable to Non Moving Party. Smith v. McMullen 589 F Supp. 642 Land Sevices Inc. v. Die Inc. 102 F.D.D. 252

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

The Appellant finds in the case of Stanton v. Larsh (Ca Fla) 239 F2D 104 in part "On Defendant's Motion for Judgement on the Pleadings where no matter outside the Pleadings are presented. The fact Allegation of Complaint are to be taken as true but those of Answer are taken as true only where and to the extent that they have not been denied or do not conflict with those of the Complaint.

The Appellant prays for an opportunity to present his case to our Court System.

Respectfully Submitted

L. A. Williams

L. A. Williams
Appellant Pro Se

CAUSE NO. 4-83-451-K

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

L. A. WILLIAMS

VS

GENERAL MOTORS CORPORATION

AUGUST 8, 1984

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

L.A. WILLIAMS

VS.

GENERAL MOTORS CORPORATION

CIVIL ACTION
NO. 4-83-451-K

JUDGEMENT

This matter is before the Court on Defendant's Motion for Summary Judgement. By an Order dated July 30, 1984, this Court granted that motion after careful consideration of the motion, the brief in support of the motion, and the record before the Court. For the reasons set out in the Findings of Fact and Conclusions of Law filed herein, it was and is the conclusion of the Court that there are no material facts in issue and that the Defendant is entitled to a judgement as a matter of law.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that the Plaintiff take nothing, that the action be dismissed on the merits with prejudice to the refiling hereof, and that judgement be, and is hereby, entered against Plaintiff and in favor of Defendant.

SIGNED this 8 day of Aug., 1984.

DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX "A"

CAUSE NO. 84-1731

UNITED STATES COURT OF APPEALS
FOR FIFTH CIRCUIT

L.A. WILLIAMS,

Appellant

-versus-

GENERAL MOTORS CORPORATION,

Appellee

DECEMBER 4, 1984

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1731
Summary Calendar

L.A. WILLIAMS,

Plaintiff-Appellant,

versus

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

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(December 4, 1984)

Before RUBIN, RANDALL, and TATE, Circuit Judges.*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

TATE, Circuit Judge:

The Plaintiff Williams brought suit against his former employer ("General Motors") in Texas state court. This suit, filed in September 1983, sought damages for wrongful discharge and for defamation, arising out of the discharge of Williams on December 3, 1981, upon charges that he had stolen from the company parking lot a motorcycle that belonged to another employee. The district court granted summary judgement and dismissed Williams' suit with prejudice, upon the factual showing by General Motors (denied as correct by the plaintiff, but without himself producing any opposing factual showing) that (1) the discharge was for proper cause and in accordance with Williams' employment contract, and (2) the defamation action, inter alia, was time-barred by a one-year Texas statue of limitations. We may say,

at this point, that the summary judgement was properly granted upon the uncontroverted factual showing.

Williams appeals. He raises mainly alleged procedural errors, which we will note below. For reasons to be summarized, we find no merit to them and, accordingly, affirm.

Procedural Context

Williams elected to institute and prosecute this suit and appeal pro se. Williams made little attempt, however, to comply with pre-trial procedural requirements that he produce a factual showing that genuine issues of material fact precluded the summary judgement sought by General Motors under Fed.R. Civ.P.56.

On the first discovery deposition taken of him by General Motors, his testimony was marked by repeated refusals to answer questions. the deposition

was recessed, and General Motors secured an order directing Williams to answer the questions as set forth in a memorandum. On the second discovery deposition taken pursuant to this order, Williams answered some of the questions but, eventually, walked out of the deposition before it was concluded, remarking, "I don't think I have to put up with this crap."

On May 18, 1984, some eight months after the suit had been removed to federal court, General Motors filed a motion for summary judgement, with affidavits and other showing totaling some 90 pages, with a certificate that same had been served on Williams by deposit in the mail of properly addressed envelope sent by certified mail. Despite post office notices to Williams on May 19, June 1, and June 4, 1984, Williams did not claim the letter, and it was returned by the post office unopened.

(It was again sent by mail, this time not certified, and Williams in his notice of appeal and brief admits having received all the material on June 12, 1984.) On July 16, 1984, General Motors filed a further factual affidavit by Kenneth Burchill, in the main reiterating previous showings by General Motors with regard to Williams' discharge over the motorcycle incident.

On July 18, 1984, the district court ordered Williams to show cause within ten days from date why General Motors should not be granted summary judgement, which Williams received on July 24, 1984, per return receipt. No response from Williams being made, the district court entered an order on July 30, 1984, concluding that summary judgement in favor of General Motors should be granted.

On August 6, 1984, Williams filed a reply" to summary judgement." R.122. Insofar as this "reply" attempts to controvert the undisputed facts relied upon by General Motors, it may be observed: (a) some of the denials are irrelevant (e.g., date of hiring; showing of non-indigency); (b) some of the denials, in which Williams stated he would produce witnesses as to General Motors' defamatory discussion of his discharge with third persons, related to the time-barred defamation action (and we further note Williams' failure during the entire time the motion for summary judgement was pending to produce a factual showing by affidavits, deposition, or otherwise, that there was a genuine dispute as to these material facts, Fed.R.Civ.P.56(c),(e),(1); and (c) some relate to Williams' contention that his discharge was wrongful because discriminatory, (1) in that another employee quilty

of wrongful conduct (e.g., climbing a fence into the plant) had not been disciplined--which overlooks the contractual right of General Motors to discharge Williams, a supervisory employee, for this more serious cause; (2) and in that his co-employees Cook and Wheeler, initially charged with him in the motorcycle incident were not disciplined--which overlooks that, in his first discovery deposition of December 8,1983, Williams had stated, "I will take full responsiblity for the removal of it (the motorcycle from the General Motors plant), "p.12, and "I did not see anyone remove that motorcycle," p.13, although likewise hinting that others were involved but "I don't want to involve the other--some other people," p.13. In his deposition, Williams had also indicated that certain hourly employees belonging to the union had not been fired for stealing, as reflected by union

grievance records. Tr.100-01, 441-45.

As to the latter, or (c), attempted showing, Williams' complaint, filed in state court, bases his claim of wrongful discharge solely upon state law and upon his contract of employment. The uncontroverted showing is that under his contract of employment as supervisor General Motors had the right to discharge him for cause at any time--and we are cited to no provision of state law that would entitle an employee, discharged under his employment contract for appropriate cause, to any redress because other employees potentially liable to a similar sanction had received a more favorable treatment. Although the plaintiff's "reply" also contains the conclusory statement that General Motors "has no right to discriminate because of age or seniority," no factual showing whatsoever is made to support discrimination in that regard; aside from

which, Williams' complaint did not assert any cause of action based upon whatever federal rights might be implicated by a discharge for such a discriminatory reason.

On August 8, two days after the plaintiff Williams' "reply" was received, the district court filed findings of fact and conclusions of law supporting it's grant of summary judgement and, thereupon, entered judgement dismissing the plaintiff Williams' action. Williams timely noticed his appeal.

Appellate Contentions

By this pro se brief, Williams raises mainly procedural contentions. We find them to be without merit. Briefly, these contentions concern:

(1). A contention that Williams did not receive proper notice of the summary judgement--refuted by the procedural facts outlined above; and that the court erred by not extending the time so as to allow Williams time to respond to the motion--a contention similarly refuted, aside from the

circumstance that Williams never sought an extension for this purpose prior to the date fixed by order for the submission of the motion for summary judgement to the district for it's decision, see Fed. R. Civ.P. 56(f).

(2), (3), and (6). Contentions based upon "Texas Rules of Court", Rules 166A and 167, to the effect that certain procedural requirements of these state-court procedural rules were not met. These contentions overlook that "the Federal Rules of Civil Procedure, like other provisions of federal law, govern the mode of proceedings in federal court after removal of a state-court action to federal court)". Granny Goose Foods, Inc. v. brotherhood of Teamsters & Auto Drivers Local No. 70 of Alameda County, 415 U.S. 423, 438, 94 S.Ct. 1113, 1123 (1974), see also 4 Wright and Miller, Federal Practice and Procedure,

S 1024 (1969). In the present instance, the record reflects that the time constraints and notice required for grant of a summary judgement in federal court order Fed.R. Civ.P. 56 were met.

(4) and (5). By these contentions, Williams seems to contend that the district court was under some obligation to make specific response to Willliams' belated and mainly conclusory "reply" of August 6, 1984, to General Motors' motion for summary judgement. This motion had been filed on May 18; in further support of it, General Motors had filed a supplementary affidavit (Burchill). By the district court's rule to show cause of July 18, the motion was fixed for sub-mission for decision as of July 28. As our somewhat tedious analysis of the contents of Williams' "reply" to it may illustrate, Williams by it did not raise any genuine issue of material fact-- aside

from not furnishing "by affidavits or otherwise .....specific facts" to raise such an issue, Fed.R.Civ.P. 56(e).

The district court's findings of fact and conclusions of law filed on August 8, for adequate reasons set forth therein, properly held that no genuine issues of material facts had been raised that would preclude summary judgement in favor of General Motors.

Conclusion

Finding no merits to the plaintiff-appellant's contentions of error, we AFFIRM the judgement of the district court dismissin his action with prejudice.

AFFIRMED.

X X X

APPENDIX "B"

CAUSE NO. 84-1731

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

L.A. WILLIAMS

Appellant

-versus-

GENERAL MOTORS CORPORATION

Appellee

JANUARY 9, 1985

APPENDIX "B"

IN THE UNITED STATES OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1731

L.A. WILLIAMS,

Plaintiff-Appellant,

versus

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING

(January 9, 1985.)

Before RUBIN, RANDALL AND TATE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

United States Circuit Judge

Office - Supreme Court, U.S.
FILED
MAR 27 1985
ALEXANDER L. STEVAS
CLERK

84-1628

No. 84-1731

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

L. A. WILLIAMS, *Petitioner*

vs.

GENERAL MOTORS CORPORATION, *Respondent*

On Petition for Writ of Certiorari of the
United States Court of Appeals for the Fifth Circuit

Respondent's Brief in Opposition

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No. 84-1731

IN THE

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OCTOBER TERM, 1985

L. A. WILLIAMS, *Petitioner*

vs.

GENERAL MOTORS CORPORATION, *Respondent*

On Petition for Writ of Certiorari of the
United States Court of Appeals for the Fifth Circuit

Respondent's Brief in Opposition

Petitioner, L. A. Williams, ("Williams") does not present any special or important reasons for granting a Writ of Certiorari within the scope of Rule 17 of the Rules of this Court. Williams cites no case or other authority, bringing his Petition within that Rule. Williams' effort to secure further review by this Court is bottomed solely upon hearsay statements set forth by Williams in his Application. Williams merely reasserts the same factual issues raised in his Petition for Rehearing.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit was not published pursuant to its local Rule 47.5.

JURISDICTION

The jurisdictional requisites for filing the Petition for Certiorari are inadequately set forth in the Petition. Respondent denies that the Petition presents any of the grounds required by Rule 17 of this Court for granting of a Writ of Certiorari.

QUESTIONS PRESENTED

Williams' seven enumerated "questions" as presented are not, in fact, proper questions because they are based upon false assumptions and are directly contradicted by the record in this case. Williams' statement of questions for review are, in effect, no more than a summation of the grounds he urged in his Petition for Rehearing in the Court of Appeals. After due consideration, the Petition for Rehearing was denied by the Fifth Circuit Court. Williams has presented no proper question to this Court by the Petition for Writ of Certiorari. The only proper question is:

> Whether Certiorari should be granted when review is being sought of a lower Court decision which turns solely upon an analysis of the particular facts involved?

STATUTES (RULES) INVOLVED

The procedural rules involved herein are Rules 6, 30 and 56, Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

Respondent, General Motors Corporation, ("GM") respectfully suggests that the statement contained in the Opinion of the Court of Appeals for the Fifth Circuit

properly sets forth all of the relevant facts. Williams' apparent statement of the case is inaccurate, incomplete, misleading and argumentative, compelling this counter-statement to correct his inaccuracies and omissions.

Williams filed this suit pro se[1] seeking damages against GM in the amount of $400,000 for alleged discrimination and defamation of character resulting from his discharge as a supervisor at GM's Plant. Williams was employed as a salaried supervisor at the GM Plant under a written employment agreement effective March 16, 1963. (Employment Agreement attached to Charles E. Posey's Affidavit in support of Motion for Summary Judgment R.78.) This agreement provided for Williams' employment on a monthly basis and was terminable by GM at any time for cause. The history of Williams' employment and the facts relative to his discharge are shown by affidavits attached to GM's Motion for Summary Judgment.

On November 26, 1981, Williams was working at the Plant on its third shift. This shift ended about 5 a.m. Together with two other supervisors, Williams walked to the salaried parking lot where a Plant security guard (Graham) saw Williams push a motorcycle to and load it

[1]Although not an indigent person, Williams represents himself "pro se". He owns and resides on a 200 acre tract of land in Johnson County, Texas. (Dep. 305). Since December 2, 1981, he has sold three houses which he owned in the City of Arlington and his resort place on Cedar Creek Lake in Bastrop County. (Dep. 34-37). Being 55 of age and with more than 10 years credited service at the time of his discharge, Williams had a vested interest in General Motors' contribution to his retirement fund. At the time of his discharge, he had the option of receiving $505 monthly providing he left his personal contribution in the retirement fund instead of taking a Metropolitan annuity policy. Williams may still exercise such an option upon surrender of his Metropolitan annuity policy and receive $505 monthly, retroactive to January 1, 1982. If he postpones the time of such an election, his monthly payment will be proportionately increased to a total of $823 at age 65. (Posey Aff.)

in his pickup which was parked beneath a large light. This motorcycle had been left by another GM employee (Smith) on the lot.

The guard assumed that Williams had Smith's permission to take the motorcycle. (Graham Affidavit R.68) After the guard had gone off duty, the owner reported that his motorcycle had been stolen. The motorcycle was returned at some time after November 30, 1981, by an unidentified person. When Graham returned to work, he learned of the notice of the stolen motorcycle and immediately reported the facts to Lieutenant Schulze in Security. Williams was then interviewed by Lieutenant Schulze and Chief W. E. Mercer of the Security force. When Mercer urged Williams to tell the truth about his involvement in the motorcycle incident, Williams offered to do so if any charges would be dropped. When Mercer replied that he could not agree to drop the charges, Williams responded that he would stick to his story as previously told to Schulze. (Mercer Affidavit R.71) Williams was twice interviewed by Plant officials and except for a vague denial, he refused to give an explanation of his involvement in the motorcycle incident.

He was then discharged and paid through the last day he had worked. (Posey Affidavit R.74) He received and cashed his check for the time worked in December without complaint or protest. He then applied to the Texas Employment Commission for unemployment benefits. After a hearing, the Commission found that Williams had taken the motorcycle from the parking lot and denied his claim. (Dep. 207-217)

Notwithstanding his vague denial to GM management that he had taken the motorcycle, Williams later admitted in his oral deposition at page 12:

> "Q. It's your testimony here under oath today that at no time you removed that green motorcycle from the GM plant?
>
> A. Okay. I will assume full responsibility for the removal of that motorcycle from the parking lot."

There are similar admissions through his deposition. For example, on page 59:

> "I told you I would accept all the blame."

Throughout his deposition, Williams refused to give the names of witnesses of his involvement in taking the motorcycle. Because of Williams' repeated refusals to answer questions seeking details regarding his involvement in the taking and returning of the motorcycle, the trial court by its Order of February 22, 1984, directed Williams "to respond fully, truthfully and accurately to each of the questions set forth in Defendant's Memorandum of Law and any follow-up questions which may be propounded to him at the continuation of his deposition." (R.52)

In light of the trial court's Order, Williams' deposition was resumed on March 21, 1984. Again, he refused to answer non-privileged questions and failed to produce the documents twice requested. He agreed, however, to produce the documents and fill in the information on the lines left blank in his original deposition and continue his testimony on April 13, 1984.

Upon the resumption of his deposition on April 13, 1984, Williams again failed to produce the documents as he had promised. Shortly after the beginning of that deposition, Williams charged out of the room and did not return for further questioning. (Dep.447) The deposition was then closed. After Williams' testimony had been transcribed, he signed his deposition which is a part of the Record.

On May 18, 1984, GM filed its Motion for Summary Judgment attached to which were six affidavits which gave the complete history of Williams' employment, the written agreement under which he was employed as a supervisor, and the facts leading to Williams' discharge. A copy of the Motion and affidavits were sent to Williams by certified mail, return receipt requested. When GM's counsel failed to receive the return receipt, Williams was sent a letter requesting that he call for the letter and documents previously mailed him. Counsel's letter of May 18, 1984, was returned by the Postmaster with a notation that it was unclaimed even though three notices had been put in Williams' post office box. GM's counsel filed a Supplemental Certificate of Service and on the same day Williams was mailed copies of the Motion for Summary Judgment, supporting affidavits and GM's Brief by first class mail. In his Notice of Appeal and Appellate Brief, Williams admits receiving all of this material on June 12, 1984. Williams having never responded to the Motion, the court on July 18, 1984, issued a Show Cause Order directing him to appear and show cause within 10 days why GM's Motion for Summary Judgment should not be granted. On July 30, 1984, the Court, after Williams had failed to appear and show cause why such an order

should not be entered, entered its Order granting GM's Motion for Summary Judgment. On August 6, 1984, Williams filed his Reply without any controverting affidavits or properly raising specific facts showing that there was a genuine issue for trial. On August 8, 1984, the trial court filed Findings of Fact and Conclusions of Law and entered final Judgment. Williams then filed his notice of appeal on August 16, 1984.

SUMMARY OF THE ARGUMENT

As the Fifth Circuit Court noted in its decision, Williams raised mainly procedural contentions in his appeal. These contentions the appellate court found to be "without merit." It is these same procedural complaints that Williams brings before this Honorable Court, after the Fifth Circuit properly found that the trial court had complied fully with the procedural requirements necessary in granting a summary judgment.

ARGUMENT

I. Petitioner failed to properly refute respondent's Motion for Summary Judgment.

Rule 56(e), Federal Rules of Civil Procedure, is clear on this question. It provides in pertinent part:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial.

> If he does not so respond, summary judgment, if appropriate, shall be entered against him."

It is incumbent on the opposing party to rebut the motion for summary judgment with "significant probative" evidence. See, *First National Bank of Arizona v. Cities Services Co.*, 391 U.S. 253, 290, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968); *Munoz v. International Alliance*, 563 F.2d 205,214 (5th Cir. 1977); *Houston v. Grocers Supply Co., Inc.*, 625 SW2d 798 (Tex. Civ. App. — Houston [14th] 1981, no writ). This principal is now well established in other circuits. For example, in *Zoby v. American Fidelity Co.*, 242 F.2d 76,80 (4th Cir. 1957), the Fourth Circuit stated:

> "It is well settled, however, that to resist a motion for summary judgment, the party against whom it is sought must present some evidence to indicate that the facts are in dispute, where the moving party's evidence has shown otherwise; and as to the foregoing matters, the record reveals no such evidence. His bare contention that the issue is disputable will not suffice." Also, see *Schoonfield v. Mayor and City Council of Baltimore*, 399 F.Supp. 1068 (D.Md. 1975).

Though it is true that a party opposing a motion for summary judgment is entitled to all the favorable inferences to be drawn from the evidence, *Cram v. Sun Insurance Office, Ltd.*, 375 F.2d 670, 674 (4th Cir. 1967), such inferences must be firmly based on established facts. *Schoonfield, supra.* The Courts have consistently held that a motion for summary judgment cannot be defeated by factual assertions in the reply brief of the party opposing it, inasmuch as documents of this char-

acter are self-serving and are not probative evidence of the existence or non-existence of any factual issues. *Schoonfield, supra*; *Gordon v. Lipoff*, 320 F.Supp. 905 (D.C. Mo. 1970). Williams presented no evidence to rebut that which was presented by GM.

II. Respondent's utilization of petitioner's deposition testimony.

In support of GM's Motion for Summary Judgment, GM presented to the Trial Court not only sworn affidavits of third party witnesses, but also the deposition testimony of Williams.

Williams' deposition was taken pursuant to Rule 30, Federal Rules of Civil Procedure. Williams' deposition was properly noticed for November 8, 1983. (R.36.) After Williams' refusal to respond to legitimate inquiry of GM, the Trial Court entered its order of February 22, 1984, directing Williams "to respond fully, truthfully, and accurately to each of the questions set forth in Defendant's Memorandum of Law and any followup question which may be propounded to him at the continuation of his deposition." (R.52).

In light of the Trial Court's order, Williams deposition was resumed on March 21, 1984. Notice of Continuation of Oral Deposition was properly filed with the Trial Court and forwarded to the Respondent. (R.56.). Again, he refused to answer non-privileged questions and failed to produce the documents twice requested. He agreed, however, to produce the documents and fill in the information on the lines left blank in his original deposition and continue his testimony on April 13, 1984.

At all times, Williams had properly received notice of the intent to conduct oral examination under Rule 30 of the Federal Rules of Civil Procedures, without ever raising any objection. Williams appeared for the deposition, as well as its continuations.The cases cited by Williams in his Petition are not relevant to any issue before this Court.

In *Pikle-Rite Company v. Bonduel Pickling Company*, 282 F.2d 551 (E.D. Wis. 1968), the Court was confronted with testimony that proper notice of deposition was not given to one of the parties involved and for that reason, the Trial Court felt it inappropriate to give any weight to the admissions and declarations made in such deposition testimony. At no time prior to Williams' filing with this Court his Petition had he raised any objection to the deposition testimony either being taken or considered by the Trial Court. Williams' failure to timely object to the depositions constitutes a clear waiver of any errors or irregularities which might be found in notice by him. *Peitzman v. City of Illmo*, 141 F.2d 956 (8th Cir. 1944), cert. denied, 65 S.Ct. 47, 323 U.S. 718, 89 L.Ed. 577, rehearing denied, 65 S.Ct. 112, 323 U.S. 813, 89 L.Ed. 647.

III. Petitioner was permitted sufficient time to respond to respondent's Motion for Summary Judgment.

As the Fifth Circuit noted, Williams' contention that he did not receive proper notice of summary judgment is clearly refuted by the procedural facts of this case. Similarly, Williams' argument that the District Court erred by not extending the time so as to allow Petitioner time

to respond to the motion is without merit. It is a contention similarly refuted by the procedural facts, aside from the circumstance that Williams never sought an extension for this purpose prior to the date fixed by order for the submission of the Motion for Summary Judgment to the District Court for its decision, see Federal Rules of Civil Procedure, Rule 56(f). Williams seeks to rely upon the decision rendered in *Beck v. Borden, Inc.*, 724 F.2d 44 (6th Cir. 1984), wherein the Court, in reviewing the time requirements of Rule 56(c), noted that the opposing party shall be "served" at least 10 days before the time fixed for the hearing with a copy of the Motion for Summary Judgment. As the record indicates, Petitioner received such notice. The ruling in *Beck*, *supra*, does not provide that the Court's Show Cause Order grant an additional 10 days to Petitioner for filing his Response. Sufficient time was granted to Petitioner. Petitioner admits in his Notice of Appeal and Brief filed with the Court of Appeals to having received all of the Respondent's Motion for Summary Judgment on June 12, 1984. Petitioner having never responded to the motion, the Trial Court, on July 18, 1984, issued a Show Cause Order directing him to appear and show cause within 10 days why GM's Motion for Summary Judgment should not be granted. On July 30, 1984, the Trial Court entered its Order granting Respondent's Motion for Summary Judgment.

Williams seeks, in his Petition before this Court to argue that the District Court erred in granting GM's Motion for Summary Judgment without first alerting Williams to the need for counter-affidavits. To sustain this proposition, Williams relies on the case of *Madyun*

v. Thompson, 657 F.2d 868 (7th Cir. 1981) wherein that Court was faced with an appeal in forma pauperis by prison inmates of the Pontiac State Prison in Illinois. As the Seventh Circuit pointed out in its opinion, there exists a doctrine which is specifically limited to pro se prisoner litigant that prior to granting a summary judgment, it is appropriate that the pro se prisoner be given adequate knowledge of the right to file and the necessity of filing counter-affidavits to oppose summary judgments. It is clear that this doctrine is not applicable to the case at hand in that: (1) Williams is not the indigent litigant found in the pro se prisoner cases, and (2) Williams clearly does not fall within the pro se inmate category.

On August 6, 1984, Williams filed a "Plaintiff's Reply to Summary Judgment" (R.122.). Insofar as this "Reply" attempts to controvert the undisputed facts relied upon by GM, the Fifth Circuit Court of Appeals closely reviewed same, and stated that:

A. Some of the denials are irrelevant;

B. Some of the denials related to time-barred defamation action; and

C. Some of the denials related to Williams contention that his discharge was wrongful because of discrimination, yet his claim for wrongful discharge is brought solely upon state law and upon his contract of employment. The uncontroverted showing is that under the contract of employment, as supervisor, GM had the right to discharge him for cause at any time.

CONCLUSION

Petitioner has failed to demonstrate that there are any grounds for the exercise of this Court's discretionary certiorari jurisdiction. The holdings in the Fifth Circuit conflict with no decision of another Court of Appeals nor of this Court. The Court of Appeals has not erroneously decided an important question of federal law nor is any important question of federal law presented by the Petition.

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing Brief of Respondent, General Motors Corporation, was served on the Petitioner by placing such copies in a properly stamped envelope, sent certified mail, return receipt requested, addressed to Mr. L. A. Williams, P.O. Box 374, Rio Vista, Texas 76093, on this the 26th day of March, 1985.

One of the Attorneys for
Respondent, General Motors
Corporation